

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4397

November 8, 2012

R E S O L U T I O N

Resolution E-4397. PG&E-San Francisco Community Choice Aggregation Service Agreement.

PROPOSED OUTCOME: This Resolution approves the negotiated Community Choice Aggregator Service Agreement and the First Amendment to this negotiated Service Agreement between the City and County of San Francisco and Pacific Gas and Electric Company (PG&E).

ESTIMATED COST: \$0

By Advice Letter 3682-E filed on June 3, 2010 and 4063-E filed on June 15, 2012.

SUMMARY

On June 3, 2010, Pacific Gas and Electric Company (PG&E) submitted Advice Letter (AL) 3682-E seeking approval of a non-standard Community Choice Aggregation (CCA) Service Agreement (Service Agreement) that PG&E and City and County of San Francisco (CCSF) have negotiated. On June 5, 2012, PG&E submitted a second advice letter, AL 4063-E, seeking approval of the First Amendment to the 2010 negotiated Service Agreement. The 2010 negotiated Service Agreement was based upon the exemplary standard Utility CCA Service Agreement adopted in D.05.12-041 and embodied in PG&E's Electric Form 79-1029. This Resolution approves both advice letters. We find that the changes resulting from the negotiated Service Agreement and the subsequent amendment will leave utility bundled customers no worse off. We further find that PG&E providing opt out information and names to CCSF prior to mass

enrollment does not conflict with Assembly Bill 117 or other applicable law and will not adversely affect the privacy rights of PG&E's customers. The negotiated Service Agreement, which we approve, requires PG&E to release this customer-specific information to CCSF pursuant to the terms of the negotiated Service Agreement.

BACKGROUND

The Standard Utility CCA Service Agreement drafted pursuant to D.05-12-041 is embodied in "Electric Form 79-1029" which is a Commission approved tariff form.

In 2002, the California Legislature approved Assembly Bill (AB) 117 (Stats. 2002, ch. 838 (Migden)), enabling cities and/or counties to implement CCA programs. In D.04-12-046 and D.05-12-041, the Commission developed detailed rules for implementing CCA service. In D.05-12-041 and Resolution E-4013 (approving Advice Letter 2784-E-A), the Commission approved a standard Utility-CCA Service Agreement, to be executed prior to a CCA initiating service in order to address the obligations of the serving utility and the CCA. D.05-12-041 provided that the standard Service Agreement is exemplary and may be modified. PG&E's standard CCA Service Agreement from D.05-12-041 is an approved tariff form, titled "Electric Form 79-1029."

City and County of San Francisco's CleanPowerSF was registered as a CCA on May 28, 2010.

On May 18, 2010, the Implementation Plan for CCSF was certified by the Commission, in accordance with Public Utilities Code, Section 366.2 (c) and on May 28, 2010 CleanPowerSF, which is the City and County of San Francisco's (CCSF's) CCA, became a registered CCA.

PG&E and City and County of San Francisco agreed to modify the Standard Utility CCA Service Agreement seeking approval via Advice Letter 3682-E.

In 2010, CCSF approached PG&E to negotiate modifications to the standard Service Agreement Electric Form 79-1029. As a result of these discussions/negotiations, CCSF and PG&E reached an agreement on the terms for the negotiated Service Agreement.

On June 3, 2010 PG&E filed Advice Letter 3682-E requesting Commission approval of the negotiated Service Agreement between PG&E and CCSF.

The sections that were significantly modified as part of the negotiated Service Agreement are:

1. **Section 3** - Term of Service: Proposed changes extended the termination date to two years after the effective date, with a duty to negotiate a successor agreement.
2. **Section 4** - Events of Default and Remedy of Default: These terms are revised to ensure that in an event of default the Agreement may be terminated only upon Commission Authorization.
3. **Section 5** - Billing and Payment: The rules and processes are revised and clarified including provisions for interest if payments are late.
4. **Section 6** - Limitation of liability: The terms of this section are revised to facilitate CCSF to pursue penalties from PG&E at the Commission if CCSF believes there has been a willful violation of the Agreement by PG&E. Such claims are to be considered and evaluated under Commission rules and authorities.
5. **Section 11** – Nondisclosure: This section spells out procedures for disclosure of customer specific information if CCSF is obligated to disclose confidential information. It is described in more detail below. PG&E is seeking specific Commission approval for this section.

6. **Section 15** - Dispute resolution: Negotiated agreement clarified context to include language that would allow either Party to seek Commission Orders as applicable for dispute resolution and adjudication of claims in Exigent Circumstances in connection with the negotiated Service Agreement.
7. **Section 18** - Unauthorized energy use: These terms are revised and clarified to ensure CCA provides PG&E a copy of monthly load data sent to CAISO and resolves any discrepancies.
8. **Section 22** – Audits: This section is revised to provide expanded audit rights to both CCSF and PG&E. PG&E is seeking specific Commission approval for this section.
9. **Section 23.8** - Data to CCSF: PG&E is seeking specific Commission approval for this section.

PG&E is seeking specific Commission approval and authorization of specific provisions modified from the Standard Service Agreement:

- **Section 11** – is titled “**Nondisclosure**” and provides a framework for disclosure, and non-disclosure, of confidential customer information. PG&E and CCSF agreed to add the language underlined below to Section 11.2 of the standard Service Agreement:

Notwithstanding the preceding, Confidential Information may be disclosed to any governmental, judicial or regulatory authority requiring such Confidential Information pursuant to any applicable law, regulation, ruling, or order, provided that: (a) such Confidential Information is submitted under any applicable provision, if any, for confidential treatment by such governmental, judicial or regulatory authority; and (b) prior to such disclosure, the other Party is given prompt notice of the disclosure requirement so that it may take whatever action it deems appropriate, including intervention in any proceeding and the seeking of any injunction to prohibit such disclosure. If a request for Confidential Information supplied by PG&E is made of CCA under applicable public records laws, including without limitation the City and County of San Francisco Sunshine Ordinance and the California Public Records Act

and CCA believes that it is obligated to disclose Confidential Information in response to such request, CCA shall provide PG&E with prompt notice of such request so that PG&E may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. However, a disclosure that is required by law shall not constitute a breach of this Agreement.

- **Section 22** - is titled “**Audits**” and provides a framework for conducting audits to verify the accuracy of certain types of data, which will become effective upon Commission approval and authorization. As per modified Section 22.1(c) and Section 22.2 (with respect to release of the identity of customers who have opted out prior to mass enrollment) PG&E provides substantially expanded audit rights; CCSF provides some audit rights to PG&E as well.

- a) **Section 22.1(c)** of the negotiated Service Agreement has been revised to add the language underlined below:

PG&E shall retain such specific records as may be required to support the accuracy of: (a) meter data provided in PG&E’s consolidated billings, (b) remittances of CCA customer payments to CCA; (c) opt-out requests processed by PG&E, and (d) charges for services provided by PG&E (collectively “Audit Matters”). When the CCA reasonably believes that errors related to Audit Matters may have occurred, the CCA may request the production of such documents as may be required to verify the accuracy of such Audit Matters. Such documents shall be provided within ten (10) business days of such request. In the event the CCA, upon review of such documents, continues to believe that PG&E’s duty with respect to any Audit Matter has been breached, the CCA may direct that an audit be conducted. The CCA shall designate their own employee representative or their contracted representative to audit PG&E’s records.

- b) **Section 22.2** of their negotiated Service Agreement has been revised to add the language underlined below:

If CCSF undertakes to directly receive customer opt outs, CCSF shall retain such specific records as may be required to support the accuracy of opt-out requests processed by CCSF. When PG&E reasonably believes that errors related to such matters may have occurred, PG&E may request the production of such documents as may be required to verify the accuracy of such matters. Such documents shall be provided within ten (10) business days of such request. In the event that PG&E, upon review of such documents, continues to believe that CCA's duty with respect to any such matter has been breached, PG&E may direct that an audit be conducted. PG&E shall designate their own employee representative or their contracted representative to audit CCA's records.

- **Section 23.8** – is titled **Miscellaneous** and pertains to exchange of information to CCSF.

The new section 23.8 of the Service Agreement, states:

23.8 During the period between the initial customer notification of a particular phase of service offered by CCA (per Rule 23.H and I) and the Mass Enrollment date for that phase (per Rule 23.J), if CCA provides a list to PG&E of the customers in that phase on or before the date of the First notice, PG&E will provide a weekly report of the names, billing addresses, and associated load amounts for each of the customers in that phase which opted out that week. However, if CCA undertakes to receive opt outs directly, PG&E shall not be required to provide such weekly reports. CCA shall pay for the actual costs of the work needed to generate these reports not to exceed two hours of account assistance per report under Section 9.d of PG&E Tariff E-CCA.

PG&E also seeks to waive, to the extent necessary, the standard CCA tariff language contained in PG&E's Electric Rule 23.C.3.a and 23.J.2 and customer privacy requirements in rule 9.M.

PG&E and CCSF further negotiated and filed an amendment to their negotiated Service Agreement via a second Advice Letter.

On June 15, 2012, PG&E filed a second advice letter AL 4063-E requesting Commission Approval of the First Amendment to the negotiated Service

Agreement that would allow the parties to extend the expiration date of the negotiated Service Agreement to December 31, 2012. The Amendment modified only two sections of the negotiated Service Agreement, while all other terms of the negotiated Service Agreement remained the same. The amended sections are:

1. **Section 3 - Term of Service:** Amended to extend the term of the agreement and the deadline to negotiate a new CCA Service Agreement by an additional six and a half years.
2. **Section 20 - Conflicts between this Agreement and State Statutes or PG&E's Community Choice Aggregation Tariff:** Amended to recognize the enactment of changes to State Law on CCA and the authorization of additional electric rules and schedules that may apply to CCA.

PG&E says the negotiated agreement's provision of Interest Payments in case of PG&E's delay in remitting the money to CCSF may result in higher cost to ratepayers.

PG&E has raised concern through their first Advice Letter 3682-E, such as facing a risk due to the negotiated service agreement that may result in higher payments to CCSF (interest payments due if PG&E is late in remitting customer payments to CCSF). PG&E seeks a specific finding from the Commission that these changes will leave utility bundled customers no worse off as a result.

NOTICE

Notices of AL 3682-E and AL 4063-E were made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with General Order 96-B, Section IV.

PROTESTS

Advice Letters 3682-E and 4063-E have not been protested. PG&E states that it has been authorized to represent that CCSF supports approval of this Advice Letter.

DISCUSSION

This resolution approves both the negotiated Service Agreement filed via AL 3682-E and the First Amendment to the negotiated Service Agreement, filed via AL 4063-E, because the proposed changes will not adversely affect PG&E bundled ratepayers or their privacy rights.

I. We approve modifications to sections 3, 4, 5, 6, 15, and 18 as per the negotiated Service Agreement and we also approve amendments to the negotiated Service Agreement in sections 3 and 20.

The Commission has reviewed these modified sections and amendments and approves them because they are in compliance with Commission rules related to approving a service agreement (D.05-12-041), to be executed prior to a CCA initiating service, and they appropriately address obligations of PG&E and CCSF as contracting parties.

II. We approve modifications to Section 11.2 related to nondisclosure of customer specific information.

The negotiated change is generally consistent with the Commission's treatment of the rights of the party transmitting confidential information, i.e., the right to be informed of a recipient's intent to comply with a legally compelled disclosure prior to actual disclosure, so that the transmitting party can challenge or defend against a legally compelled disclosure. (See generally D.08-04-023, p. 9 ("However, we retain the provision requiring the Reviewing Representative to immediately notify the disclosing party that a third party seeks the material. The disclosing party may then take any necessary action to protect its data.").)

III. We approve the additional language under Section 22.1(c) and Section 22.2 on audit provisions because it will allow each party the ability to verify the accuracy of customer related data.

The modifications in Section 22 will (1) assist both PG&E and CCSF to receive customer opt out requests from each other directly; (2) allow each party the ability to verify the accuracy of customer related data, such as meter data, remittance, opt-out request information and PG&E service charges and (3) allow the other party a fair opportunity to review related documents and conduct its own audit by appointing their own representative. The negotiated Service Agreement here satisfies the Commission's requirements for the protection of customer information. In the course of retaining and exchanging this information, PG&E and CCSF must comply with the nondisclosure provision already provided in the standard Service Agreement (Section 11) per the general guidance provided in D.04-12-046.

The CCA shall sign nondisclosure agreements for any confidential information that is not masked or aggregated. We will also require that all notices relevant to CCA programs inform customers that the utility may share customer information with the CCA and that the CCA may not use the utility's information for any purpose other than to facilitate provision of energy services. D.04-12-046, pp. 51-52.

IV. We approve and authorize the additional miscellaneous language in Section 23.8 because it is consistent with the secure and cost-effective sharing of information required to enable CCAs to procure power for their customers.

In Advice Letter 3682-E, PG&E states that upon satisfaction of specified conditions, PG&E will provide opt out information, including customer names, to CCSF prior to mass enrollment. PG&E believes that it is not now authorized or required to disclose this information, while CCSF believes that

the current decisions and rules, including D.04-12-046, permit release of this information to CCSF. PG&E and CCSF request the addition of Section 23.8 because it is consistent with the Commission's rules regarding the sharing of relevant information between IOUs and CCAs. D.04-12-046 was issued in the Rulemaking to Implement Portions of AB 117 Concerning Community Choice Aggregation and in it the Commission stated:

Finally, we state our intent to enforce the law with respect to its requirement that the utilities "cooperate" with CCAs in the provision of all relevant information, a term which we interpret broadly. The utilities may not determine what information is "relevant" to CCA operations as long as the utility is reimbursed for the reasonable costs of providing the information. While we welcome the utilities' tariff proposals for the secure and cost-effective sharing of information, we will not tolerate utility actions or delays that may affect the provision of information to CCAs or CCA services to customers.

The negotiated new provision Section 23.8 is consistent with the secure and cost-effective sharing of information required to enable CCAs to procure power for their customers. **We approve and authorize the additional language in Section 23.8.**

V. Commission Disposition on PG&E seeking Waivers of Standard CCA Tariff Language.

PG&E requests that the Commission "direct PG&E to waive, to the extent necessary, the standard CCA tariff language contained in PG&E's Electric Rule 23.C.3.a and J.2 and the customer privacy requirements in PG&E's Electric Rule 9.M." We address each of these requests below.

- 1. We deny PG&E's request to waive the standard CCA tariff language contained in PG&E's Rule 23.C.3.a¹ (Customer Inquiries and Data Accessibility: Access to Customer Data) because to the extent that either PG&E or CCSF is interpreting this sentence as limiting their ability or obligation to share this information with each other, that interpretation is incorrect.** The sentence reading "PG&E and CCA shall abide by the instructions of a customer as to the entities to whom access to the confidential customer information is provided" refers to the release of customer data obtained pursuant to Schedule E-CCAINFO to an entity other than PG&E or the CCA.
- 2. We approve the waiver requested from the standard CCA tariff language contained in Rule 23.J.2² (CCA Service Mass Enrollment Process) so that PG&E may provide to CCSF the information described in Section 23.8 of the modified PG&E-CCSF Service Agreement.** This request resulted from the modified Service Agreement that has added a new section 23.8, which provides for an exchange of more detailed customer information regarding opt-outs.

1 Rule 23.C.3.a states: "PG&E shall provide customer-specific usage data pursuant to Schedule E-CCAINFO. PG&E and CCA shall abide by the instructions of a customer as to the entities to whom access to the confidential customer information is provided."

2 Rule 23.J.2 states: "Within fifteen (15) days after conclusion of the Initial Notification Period, PG&E shall provide to the CCA one (1) update of its customer enrollments, providing individual customer information and energy usage data for those customers scheduled for mass enrollment. The update shall exclude all customer information for processed opt-out requests. A CCA has the option to request additional customer information pursuant to Schedule E-CCAINFO."

3. We deny Waiver of Rule 9.M³ (Rendering and Payment of Bills: Privacy of Customer Information) because Rule 9.M has no relationship to CCA opt-out information. As per the modified Service Agreement, the only information that would be released would be “opt out information and names to CCSF prior to mass enrollment.” This information cannot logically be inferred to be included in Rule 9.M’s reference to “confidential information, including financial information.”

VI. Commission disposition regarding higher costs resulting from interest payments if PG&E is late in its remittances to CCSF.

Regarding PG&E’s concern that the negotiated Service Agreement may result in higher payments to CCSF in case PG&E is late in remitting money to CCSF, the Commission finds that payments to CCSF will only be higher with respect to those required under the standard Service Agreement if PG&E fails to perform as required. The modified Service Agreement – in and of itself – would not be the cause of higher payments payable by PG&E to CCSF. We expect PG&E to make the remittances on time and not incur interest payments.

COMMENTS

Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

3. Rule 9.M states: “To preserve customer privacy, PG&E will not release confidential information, including financial information, to a third party without the customer’s electronic signature or the written consent.”

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

No comments were received.

FINDINGS

1. D.05-12-041 adopted a standard Service Agreement with the understanding that it could be modified by the mutual agreement of the utility and the CCA in order to accommodate specific circumstances.
2. PG&E's Standard Form Service Agreement is an approved tariff - Electric Form 79-1023.
3. The City and County of San Francisco's (CCSF's) CleanPowerSF is a registered Community Choice Aggregator (CCA).
4. Pursuant to D.05-12-041, Attachment A, PG&E filed Advice Letter 3682-E seeking approval of a negotiated CCA Service Agreement between PG&E and CCSF.
5. On June 15, 2012, PG&E submitted AL 4063-E containing an Amendment to the negotiated CCA Service Agreement filed earlier in AL 3682-E.
6. The negotiated Service Agreement filed in AL 3682-E had an expiration date of May 27, 2012. The amendment filed in AL-4063-E extends the Service Agreement end date by an additional six and a half years to December 31, 2018.
7. The First Amendment to the negotiated Service Agreement extends the Term of Agreement to December 31, 2018; amends the deadline to negotiate a new CCA Service Agreement; recognizes the enactment of changes to state law on CCA; authorizes additional electric rules and schedules that apply to CCA.

8. The negotiated Service Agreement and its amendment are reasonable. In particular, the negotiated Service Agreement's modifications to Sections 3, 4, 5, 6, 11, 15, 18, 22 and 23 of the standard Service Agreement and amended sections 3 and 20 are reasonable because the modifications are in compliance with Commission rules approving service agreements.
9. PG&E requests specific approval of Section 11.2: "Nondisclosure." It provides a framework for disclosure, and non-disclosure, of confidential customer information.
10. The additional language in Section 11.2 of the negotiated Service Agreement is in accordance with the Commission's treatment of the rights of a party holding and transmitting confidential information, i.e., the right to be informed of a recipient's intent to comply with a legally compelled disclosure prior to actual disclosure, so that the transmitting party can challenge or defend against such legally compelled disclosure.
11. PG&E requests specific approval of Section 22 titled "Audits." It outlines a process that would allow both parties to verify the accuracy of CCA-related customer opt out data and to appoint a designated representative to audit records if they deem it necessary.
12. The changes to Section 22 are reasonable as they provide transparency in the review process by either party of CCA-related customer opt out data and allow both parties to have a collaborative process to work together to mitigate forecast risks.
13. PG&E requests specific approval of additional Section 23.8, which is related to maintaining information on customers who opt out before the mass enrollment date. The negotiated addition of the new Section 23.8 ensures that if PG&E receives opt out information prior to Mass Enrollment then it shall provide CCSF

weekly reports with related customer information. However, if CCA undertakes to receive opt outs directly, PG&E shall not be required to provide weekly reports. CCA shall pay for the actual costs of the work needed to generate these reports, which is not to exceed two hours of account assistance per report under Section 9.d of PG&E Tariff E-CCA.

14. The new language in Section 23.8 is consistent with D.04-12-046. The section allows both parties to streamline the customer opt out reporting process through negotiated changes to the standard Service Agreement, while letting CCA bear costs of generating these reports; Commission approves the modified language in Section 23.8.

15. PG&E's provision of opt out information and names to CCSF prior to mass enrollment does not conflict with AB 117 or other applicable law and will not adversely affect the privacy rights of PG&E's customers.

16. PG&E's Electric Rule 23 addresses "Community Choice Aggregation Service." PG&E seeks waiver of Rule 23.C.3.a "Access to Customer Data."

17. It is not necessary to waive Rule 23.C.3.a because Rule 23.C.3 refers to the release of customer data obtained pursuant to Schedule E-CCAINFO to an entity other than PG&E or the CCA - not to the exchange of customer data between PG&E and a CCA. PG&E's request to waive Rule 23.C.3 should be denied.

18. PG&E seeks waiver of Rule 23.J.2 "Mass Enrollment Process" because the modified Service Agreement added a new section 23.8, which provides for an exchange of more detailed customer information regarding opt-outs.

19. It is reasonable to grant the request for waiver of Rule 23.J.2 so that PG&E may provide to CCSF the information described in Section 23.8 of the modified Service Agreement. This provision does not conflict with AB 117 or other applicable law and will not adversely affect the privacy rights of PG&E's customers.

20. PG&E seeks waiver of Rule 9. M. "Privacy Of Customer Information" under Rule 9 "Rendering And Payment Of Bills." It is not necessary to waive Rule 9.M. because provision of "opt out information and names to CCSF prior to mass enrollment" cannot reasonably be considered to be the same "confidential information, including financial information" referenced in Rule 9.M. PG&E's request to waive Rule 9 .M. should be denied.
21. PG&E expressed concern in Advice Letter 3682-E that provisions that differ from the standard Service Agreement could result in higher payments to CCSF due to interest payments that would be owed if PG&E were late in remitting customer payments to CCSF.
22. The Commission finds that payments to CCSF will only be higher with respect to those required under the standard Service Agreement if PG&E fails to perform as required. The modified Service Agreement – in and of itself – would not be the cause of higher payments payable by PG&E to CCSF.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company (PG&E) and the City and County of San Francisco's (CCSF's) negotiated Community Choice Aggregator (CCA) Service Agreement, as submitted in PG&E's Advice Letter 3682-E, is approved.
2. PG&E and CCSF's First Amendment to their negotiated CCA Service Agreement, as submitted in PG&E Advice Letter 4063-E, is approved.
3. The requested modifications to Section 11.2, Section 22.1(c), Section 22.2 (with respect to release of the identity of customers who have opted out prior to mass enrollment) and Section 23.8 of the standard form Service Agreement shall be effective upon approval and authorization by this Resolution.

4. Waiver to Standard Tariff Language contained in PG&E's Electric Rule 23.C.3.a is denied.
5. Waiver to Standard Tariff Language contained in PG&E's Electric Rule 23.J.2 is granted.
6. Waiver to Standard Tariff Language contained in PG&E's Electric Rule 9.M is denied.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on November 8, 2012 the following Commissioners voting favorably thereon:

/s/ PAUL CLANON
PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners